

**In The United States Patent and Trademark Office
On Appeal From The Examiner To The Board
of Patent Appeals and Interferences**

In re Application of: Shriniwas Lohia
Serial No.: 09/436,920
Filing Date: November 9, 1999
Confirmation No. 7304
Group Art Unit: 2141
Examiner: Adnan M. Mirza
Title: SYSTEM FOR COMMUNICATION MANAGEMENT
 INFORMATION AND METHOD OF OPERATION

MAIL STOP: APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Reply Brief

In response to the Examiner's Answer (the "*Answer*") dated September 27, 2007, Appellant respectfully submits this Reply Brief under 37 C.F.R. § 41.41. Appellant filed an Appeal Brief on May 18, 2007 explaining clearly and in detail why the final rejections of Claims 1-26 are improper and should be reversed by the Board of Patent Appeals and Interferences (the "Board"). In the *Answer*, the final rejections are sustained. This Reply Brief addresses responses made in the *Answer*.

ARGUMENT

At the outset, Appellant respectfully notes that, in the *Answer*, the Examiner again fails to address the substance of the amendments and arguments made by Appellant since the previous appeal of this case¹ (the “First Appeal”). In fact, to underscore this point, Appellant respectfully notes that the *Answer* includes text indiscriminately copied from the Examiner’s Answer in the First Appeal with no consideration of the arguments Appellant has made since the First Appeal, including responses to arguments Appellant did not raise in the Appeal Brief filed in this appeal (see, e.g., *Answer*, p. 9, § 13) but excluding any explanation of the rejection of Claims 24-26 (see, *Answer*, pp. 4-6) that were added since the First Appeal.

Moreover, Appellant also notes that, in several places within the *Answer*, the Examiner relies upon unsubstantiated assertions that “[o]ne with ordinary skill in the art at the time of the invention knows” certain facts and/or various elements of the claimed subject matter. Appellant respectfully notes that such reliance is inappropriate as the Examiner “cannot simply reach conclusions based on [his] own understanding or experience-or on [his] assessment of what would be basic knowledge or common sense.” *Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Instead, the Examiner “must point to some concrete evidence in the record in support of these findings.” *Id.* There must be some form of evidence in the record to support an assertion of common knowledge. M.P.E.P. § 2144.03. Here, the Examiner provides no evidence to support the Examiner’s assertions. As a result, Appellant respectfully submits that any rejections relying on any of these unsubstantiated assertions are improper, and, for at least these reasons, Appellant respectfully requests reconsideration and allowance of all pending claims.

Appellant’s Reply to Examiner’s Responses Regarding the 35 U.S.C. § 102 Rejection of Claims 1, 4-7, 10-14, 16, 18-21 and the 35 U.S.C. § 103 Rejection of Claims 2, 8, and 15

Appellant respectfully notes that the Examiner responds to Appellant’s argument regarding the rejection of Claims 1, 4-7, 10-14, 16, and 18-21 in view of *Flood* and Claims 2, 8, and 15 in view of the proposed *Flood-Schneider* combination (*Answer*, p. 10-11) with a substantially similar argument to that the Examiner provided in the Examiner’s Answer to Appellant’s previous Appeal Brief, essentially ignoring the amendments made by Appellant

¹ Appellant previously appealed examination of the present Application to the Board through the filing of an appeal brief on January 22, 2004. That appeal was assigned Appeal No. 20005-0521. The Board affirmed in-part and overturned in-part the rejections then pending in a decision issued on May 24, 2005. A Request for Rehearing was denied on September 15, 2005.

since the First Appeal. Appellant also respectfully notes that the Examiner's response again provides no explanation as to how the cited reference discloses "establish[ing] a communication link between the client and a particular one of the first interface card and the second interface card selected in response to the command communicated by the client, wherein the communication link forms a complete path that couples at least the client to at least the particular interface card" (emphasis added). The Examiner has never substantively addressed this element. See, e.g., *Answer*, p. 4. For at least these reasons, the Examiner's rejections of Claims 1, 4-7, 10-14, 16, and 18-21 in view of *Flood* and Claims 2, 8, and 15 in view of the proposed *Flood-Schneider* combination are improper. Appellant respectfully requests reconsideration and allowance of Claims 1, 2, 4-8, 10-15, 16, and 18-21, and their respective dependents.

Appellant's Reply to Examiner's Responses Regarding the 35 U.S.C. § 102 Rejection of Claims 22 and 24-26 and the 35 U.S.C. § 103 Rejection of Claims 3, 9, 17, and 23

Appellant respectfully notes that the Examiner also responds to Appellant's argument regarding the rejection of Claims 22 and 24-26 in view of *Flood* and Claims 3, 9, 17, and 23 in view of the proposed *Flood-Schneider* combination (*Answer*, p. 13-14) with a substantially similar argument to that the Examiner provided in the Examiner's Answer to Appellant's previous Appeal Brief. Appellant respectfully notes that the Examiner has again ignored the previous findings of the Board that *Flood* fails to disclose any "first operating system" and "second operation system" as asserted by the Examiner. See Decision on Appeal, issued May 24, 2005, pp. 12-13. As the Board previously determined, "[t]he prior art applied in the examiner's rejection simply does not provide the support needed to reject claims 3, 9 and 17." *Id.* For at least these reasons, the Examiner's rejections of Claims 22 and 24-26 in view of *Flood* and Claims 3, 9, 17, and 23 in view of the proposed *Flood-Schneider* combination are improper. Appellant respectfully requests reconsideration and allowance of Claims 3, 9, 17, and 22-26, and their respective dependents.

Appellant's Reply to Examiner's Responses Regarding Rejection of Claims 1, 7, 14, and 21 under 35 U.S.C. § 112.

Appellant respectfully notes that the Examiner fails to respond to Appellant's arguments regarding the rejection of Claims 1, 7, 14, and 21 under 35 U.S.C. § 112, presumably conceding that the rejection is improper. Specifically, the Examiner states only

that “Applicant’s arguments filed 05/18/2007 are have been fully considered but they are not persuasive. Response to applicant’s argument is as follows.” *Answer*, p. 14. No response to Appellant’s arguments on this issue follows these statements however. Moreover, to date, the Examiner has yet to provide a substantive explanation of this rejection or any response to Appellant’s arguments regarding the rejection. For at least these reasons, the rejection of Claims 1, 7, 14, and 21 under 35 U.S.C. § 112 is improper. Appellant respectfully requests reconsideration and allowance of Claims 1, 17, 14, and 21, and their respective dependents.

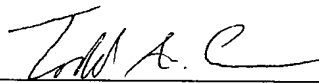
Conclusion

Appellant has demonstrated, through Appellant's Appeal Brief and this Reply Brief, that the present invention, as claimed, is clearly patentable over the references cited by the Examiner. Therefore, Appellant respectfully requests the Board to reverse the final rejection of the Examiner and instruct the Examiner to issue a Notice of Allowance allowing all pending claims.

Appellant believes no fees are due in the filing of this Reply Brief. However, the Commissioner is hereby authorized to charge any fee and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Date: 11/27/07

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